

Department of Planning, Building and Code Enforcement  
1 North First Street, Room 400  
San José, California 95110-1795

## STAFF REPORT

Meeting Date/Agenda Number  
P.C. 07/14/04 Item: 4.a.

File Number  
CP04-041 & ABC04-003

Application Type  
Conditional Use Permit

Council District  
9

Planning Area  
Cambrian/Pioneer

Assessor's Parcel Number(s)  
569-06-047

### PROJECT DESCRIPTION

Completed by: Mike Mena

Location: Northwest corner of Blossom Hill Road and Coniston Way

Gross Acreage: 3.5

Net Acreage: 3.5

Net Density: n/a

Existing Zoning: CP Pedestrian Commercial

Existing Use: Supermarket

Proposed Zoning: none

Proposed Use: Sale of alcoholic beverages for off-site consumption

### GENERAL PLAN

Completed by: MM

Land Use/Transportation Diagram Designation  
Medium Density Residential (8-16 DU/AC)

Project Conformance:  
☒ Yes ☐ No  
☐ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: MM

North: Single-Family and Two-Family Residential

R-2 Residence District

East: Commercial/Multi-Family Residential

A(PD) Planned Development District

South: Single-Family Residential

R-1-8 Residence District

West: Commercial/Multi-Family Residential

R-M Multi-Family Residence District/Other  
Commercial Districts

### ENVIRONMENTAL STATUS

Completed by: MM

Environmental Impact Report found complete  
Negative Declaration circulated on  
Negative Declaration adopted on

☒ Exempt  
☐ Environmental Review Incomplete

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: MM

Department of Public Works

None Received

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Other Departments and Agencies

? Police Department (Vice Unit), dated July 2, 2004.

? City of San José Fire Department, dated May 20, 2004.

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**GENERAL CORRESPONDENCE**

None received

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, Daniel's Specialty Food, is requesting a Conditional Use Permit (CUP) to allow off-site sale of alcoholic beverages at an existing shopping center (Blossom Hill Shopping Center) located at the northwest corner of Blossom Hill Road and Coniston Way . The applicant will be occupying a currently vacant retail space (formerly Warehouse Music) on the subject site. The Zoning Ordinance requires a CUP for off-sale of alcoholic beverages in the CP Pedestrian Commercial Zoning District.

For off-sale of alcohol at this site, a Liquor License Exception is also required. Per the State Business and Professions (B&P) Code, Section 23958, the State Department of Alcoholic Beverage Control (ABC) shall deny an application for an ABC license if the issuance would either tend to create a law enforcement problem, or would result in or add to an undue concentration of ABC licenses in the area. Therefore, a location in the City could be considered "unduly concentrated" due to crime statistics and policing issues and/or the proposed site's proximity to existing facilities with ABC licenses. In 1997, the San José City Council adopted a Resolution (No. 67681) identifying 24 Census Tracts as "unduly concentrated" for the purposes of this B & P Code regulation, and directed that no new retail ABC licenses be issued in these tracts unless the City grants an Exception for "public convenience and necessity", and that only full-service grocery stores be eligible for an

location is in a Police Beat in which index crimes and arrests exceed the citywide average by more than 20%. Therefore, an exception permit would have to be granted for the location.

The subject premises are located within the Blossom Hill shopping center consisting of a health club, fabric store, tanning salon, interior decorator and two public eating establishments (Subway & Burger Pit). Other nearby development includes a single-family and two-family dwellings to the north, single-family attached town-homes to the east, single-family detached units across Blossom Hill Road to the south, and various commercial and multi-family residence to the west of the site.

### **Project Description**

Under this permit, the off-site sale of alcoholic beverages would be a new use allowed only for the subject grocery store and not for other tenants within the surrounding retail center without existing ABC permits. No additional building square footage may be constructed as part of this project, and no extended hours of operation are included in this proposal.

### **ENVIRONMENTAL REVIEW**

The Director of Planning has determined that this project is exempt from environmental review under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act in that the use is to locate in an existing building/facility and no new construction or expansion is proposed.

### **GENERAL PLAN CONFORMANCE**

The proposed commercial use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Medium Density Residential (8-16 DU/AC) in that the site is currently developed with an existing commercial shopping center since the mid 1980s and the use does not require expansion or redevelopment of the subject site. The proposed use would not be detrimental to adjoining residential areas, consistent with the intent of the General Plan Policies related to commercial development. Additionally, the existing commercial development is architecturally designed and sited to protect the privacy of the existing and nearby residences.

### **ANALYSIS**

The key issues analyzed for the proposed project fall into two categories. First is the consideration of whether the project is in conformance with the applicable sections of Title 20, the Zoning Code

1. *For such a use at a location closer than 500 feet from any other such use either within or outside the City that the proposed location of the off-sale alcohol use would not contribute to an excess concentration of establishments which sell alcoholic beverages.* The proposed use is not within 500 feet of other such uses. The site is currently developed with an existing shopping center consisting of various commercial uses of which no other uses currently provide off-sale of alcoholic beverages at this specific site, although there are two eating establishments, one of which serves alcohol on site. Planning staff has determined that allowing an additional facility to sell alcohol for consumption off-site as an ancillary use to a full-service grocery store would not contribute to an excess concentration of such establishments in the immediate vicinity and would not therefore result in an adverse effect on the adjacent residential uses.
2. *For such a use at a location closer than 500 feet from any child care center, elementary school, secondary school, college or university, or one hundred fifty (150) feet from any residentially zoned property that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential and/or school use.* The project site is located within 500 feet from Pioneer High School (approximately 480 feet) and is within 150 feet of residentially zoned property; however, the walking distance from the store entry to the nearest residence is in excess of 300 feet. Additionally, the existing commercial development is separated from the nearby high school by Blossom Hill Road, a six-lane street and across a four-way intersection. Additionally, the existing commercial center is designed in a manner that does not orient the public entryways towards the adjacent residential properties and the proposed location/site is not directly accessible by such properties. Therefore, staff has concluded that such a use at this location would not pose a detriment to the surrounding neighborhood and uses.

Planning staff believes that the relevant findings above can be made for this full-service grocery store, and therefore, recommends that the Planning Commission approve the Conditional Use Permit subject to making the required findings for a Liquor License Exception required for the project as discussed below.

#### Liquor License Exception Permit

In January 1995 the California State Legislature passed AB 2897 (Caldera legislation) which prohibits new retail alcoholic beverage licenses in an area of over-concentration, as defined by the Business and Professions (B&P) Code Section 23958.4(a)(3) and B&P Code Section 23958.4(a)(1). A memorandum from the Police Department (attached) has indicated that the proposed use would be located in an area in which reported index crimes and arrests for the Police Beat A2, in which this site is located, are more than 200% above the citywide average. Thus, this location is considered

The Police Department has indicated that the ratio of off-sale retail licenses to population in census Tract 5029.10 does not currently exceed the ratio of off-sale retail licenses to population in the County in which the applicant's premises are located. However, if the ABC license is approved, it would result in an over-concentration of off-sale ABC licenses in this census tract. Therefore, a Liquor License Exception from the City is required.

The Planning Commission may grant the Liquor License Exception Permit, in conjunction with the Condition Use Permit, if it makes the following findings:

1. *The premises are not located in an existing Project Crackdown /Weed and Seed Area or similar areas that qualify for these programs pursuant to the City's Neighborhood Revitalization Strategy.* Police Department staff have determined that the subject site is not located in a Project Crackdown area, Weed and Seed area, or an Strong Neighborhood Initiative (SNI) area, and that the census tract in which the site is located is not currently "unduly concentrated" with off-sale ABC licenses. Although the proposal is located in an area with an above average rate of reported index crimes, the Police Department memorandum notes that no contacts/arrests have occurred at the subject location since July 2002, and that the Department does not object to the issuance of the Liquor License Exception.
2. *The premises are not located within 500 feet of any public or private school.* Although the use is located just within 500 feet of a public school (Pioneer School), approximately 480 feet, and is within 150 feet of a residentially zoned property, as stated previously, the site is designed in a manner in which the entrances to the site and proposed grocery store are not oriented towards the adjacent residences. The site is not directly accessible by the adjacent residential properties and the site is separated from the nearby high school by a busy six-lane street and an intersection, which serve as a significant divider from the school site. Therefore, staff has determined that the proposed use would not be detrimental to adjoining residential areas, and is an appropriate addition to this larger commercial site.
3. *The use would not pose a detriment to the immediate neighborhood or continue current law enforcement problems.* While the Police memorandum reported that the crime statistics for this census tract are over the 20% crime index resulting in an area that is considered unduly concentrated per B&P Section 23958.4 (a)(1), recent police contacts for the location indicate no Police department contacts/arrests have occurred since July 2002. The Police Department has no objections to the issuance of the Exception permit.

**Conclusion**

Planning staff supports the proposed project as the off-sale of alcohol in conjunction with a full-service grocery store is not expected to prove detrimental to the neighborhood, and the proposed project would provide a convenient outlet for groceries and other necessities along with the incidental sale of alcoholic beverages. Staff has included a condition to limit the area of this grocery store for alcohol sales to help ensure it remains an ancillary use. The building in which the proposed use is to be located is located such that it would not adversely affect the nearby land uses.

**PUBLIC OUTREACH**

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to discuss the proposal with members of the public. Staff has received no comments on this proposal.

**RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The project site is located on the northwest corner of Blossom Hill Road and Coniston Way (1337 Blossom Hill Road)
2. The site has a designation of Medium Density Residential on the adopted San José 2020 General Plan Land Use/Transportation Diagram but has been developed with a commercial shopping center since the mid 1980s.
3. The project site is located in the CP Pedestrian Commercial Zoning District.
4. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment

9. A Liquor License Exception is required as the Police Department and California Department of Alcoholic Beverage Control have determined that the issuance of an additional liquor license in this census tract would make this census tract “unduly” concentrated per the applicable State Code sections, and due to the above average index crime level within this Police Beat.
10. The project consists of the off-sale of alcoholic beverages in an approved retail building.
11. The building in which the proposed use is to be located is situated and oriented in such a manner that it would not adversely affect the nearby residential uses.
12. The project site is located within Census Tract 5029.10.
13. The subject site is not located in one of the census tracts identified by the City Council as problematic areas for such uses.
14. The Police Department Special Investigation/Vice unit confirmed that the shopping center is not located within any Project Crackdown, Weed and Seed, or Strong Neighborhood Initiative (SNI) Area.
15. The Police Department indicates that granting this Conditional Use Permit would not pose a detriment to the immediate neighborhood and would not generate additional law enforcement problems.
16. The premises are just within 500 feet of any public or private school, but are separated by 480 feet and a six-lane street and 4-way intersection.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed location of the off-sale alcohol use would not contribute to an excess concentration of establishments in that it would not pose a detriment to the immediate

- b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
  3. The proposed site is adequately served:
    - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
    - b. By other public or private service facilities as are required.
  4. The subject site is not located in an existing Project Crackdown/Weed and Seed Area, Project Crackdown Area, or Strong Neighborhoods Initiative (SNI) Area or similar areas that qualify for these programs on the City's Neighborhood Revitalization Strategy Criteria.
  5. The proposed use is located just within 500 feet of any public or private school, but is separated by 480 feet and a six-lane major roadway and four way intersection.
  6. The proposed off-sale alcohol use would not pose a detriment to the immediate neighborhood or continue current law enforcement problems.

In accordance with the findings set forth above, a Conditional Use Permit and a Liquor License Exception to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### **CONDITIONS PRECEDENT**

This Conditional Use Permit and Liquor License Exception Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things



## CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **No New Construction.** No additional construction or development is approved under this permit.
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
5. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
6. **Off-Sale of Alcoholic Beverages.** This permit allows the sale of alcoholic beverages for off-site consumption.
7. **Compliance with Other Permits.** The developer shall comply with all terms and conditions of

11. **Limitations on Area of Alcohol Sales.** The sale of alcohol is intended to be incidental to the primary use of grocery sales. The area of alcohol sales shall not exceed 15 percent of the total shelf space and product display area within the retail store. No alcohol product display or storage shall occur outside of the retail tenant space.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit/Liquor License Exception Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit/Liquor License Exception Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit/Liquor License Exception Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit/Liquor License Exception Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit/Liquor License Exception Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

Attachments:

☞ Police memo